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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on 9th March, 2006:—

BILL No. 18 OF 2006

A Bill to amend the Competition Act, 2002.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Competition (Amendment) Act, 2006.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

12 of 2003.

2. In section 2 of the Competition Act, 2002 (hereinafter referred to as the principal Act), after clause (b), the following clause shall be inserted, namely:—

Amendment of
section 2.

* '(ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of section 53A.'

Amendment of section 4.

3. In section 4 of the principal Act, in sub-section (2), in clause (c), after the word "access", the words "in any manner" shall be inserted.

Substitution of new section for section 8.

4. For section 8 of the principal Act, the following section shall be substituted, namely:—

Composition of Commission.

"8. (1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and professional experience of not less than fifteen years, in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, which, in the opinion of the Central Government, may be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.".

Substitution of new section for section 9.

5. For section 9 of the principal Act, the following section shall be substituted, namely:—

"9. (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- (a) the Chief Justice of India or his nominee.....Chairperson;
- (b) the Secretary in the Ministry of Company Affairs.....Member;
- (c) the Secretary in the Ministry of Law and Justice.....Member.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.".

Amendment of section 10.

6. In section 10 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

"Provided that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.".

Amendment of section 12.

7. In section 12 of the principal Act, for the words "one year", the words "two years" shall be substituted.

Substitution of new section for section 13.

8. For section 13 of the principal Act, the following section shall be substituted, namely:—

"13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Administrative powers of Chairperson.

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.".

9. In section 16 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.”;

(b) in sub-section (2), for the words “such other advisers, consultants and officers,” the words “such officers or other employees,” shall be substituted;

(c) in sub-sections (3) and (4), for the words “such other advisers, consultants, or officers,” the words “such officers or other employees,” shall be substituted.

10. For section 17 of the principal Act, the following section shall be substituted, namely:—

“17. (1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

(3) The Commission may engage, in accordance with the procedure specified by regulations such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.”.

11. In section 19 of the principal Act, in sub-section (1), in clause (a), for the words “receipt of a complaint,” the words “receipt of any information, in such manner and” shall be substituted.

Amendment of section 16.

Substitution of new section for section 17.

Appointment of Secretary, experts, professionals and officers and other employees of Commission.

12. In section 21 of the principal Act,—

(a) after sub-section (1), the following proviso shall be inserted, namely:—

“Provided that any statutory authority, may, *suo motu*, make such a reference to the Commission.”;

(b) for sub-section (2) and the proviso thereto, the following sub-section shall be substituted, namely:—

“(2) On receipt of a reference under sub-section (1), the Commission shall, give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.”.

13. For section 22 of the principal Act, the following section shall be substituted, namely:—

“22. (1) The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations.

Amendment of section 19.

Amendment of section 21.

Substitution of new section for section 22.

Meetings of Commission.

(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote:

Provided that the quorum for such meeting shall be three Members.”.

Omission of sections 23, 24 and 25.

Substitution of new section for section 26.

Procedure for inquiry under section 19.

14. Sections 23, 24 and 25 of the principal Act shall be omitted.

15. For section 26 of the principal Act, the following section shall be substituted, namely:—

“26. (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections and suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigations are called for, it may direct further investigations in the matter by the Director General or cause further inquiries to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.”.

16. In section 27 of the principal Act,—

(i) clauses (c) and (f) shall be omitted;

(ii) in clause (g), for the word "order", the words "order or issue such direction" shall be substituted.

17. In section 28 of the principal Act,—

(a) in sub-section (1), for the words, brackets, letter and figures "Central Government on recommendation under clause (f) of section 27,", the word "Commission" shall be substituted;

(b) in sub-section (2), clause (d) shall be omitted.

18. In section 29 of the principal Act,—

(a) in sub-section (1), after the words "Where the commission is of the", the words "*prima facie*" shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within sixty days:

Provided that the Commission may, if it is satisfied that the Director General was prevented by sufficient cause from submitting the report within the said period, allow the Director General to submit the report within a further period not exceeding sixty days.".

(c) in sub-section (2), after the words "parties to the combination", the words, brackets, figure and letter "or the receipt of the report from Director General called under sub-section (1A), whichever is later" shall be inserted.

19. For section 30 of the principal Act, the following section shall be substituted, namely:—

"30. Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.".

20. In section 32 of the principal Act, after clause (f)—

(a) after the words "have power to inquire", the words and figures "in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act" shall be inserted;

(b) after the words "relevant market in India", occurring at the end, the words "and pass such orders as it may deem fit in accordance with the provisions of this Act" shall be inserted.

21. For section 33 of the principal Act, the following section shall be substituted, namely:—

"33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.".

22. Section 34 of the principal Act shall be omitted.

Amendment of section 27.

Amendment of section 28.

Amendment of section 29.

Substitution of new section for section 30.

Procedure in case of notice under sub-section (2) of section 6.

Amendment of section 32.

Substitution of new section for section 33.

Power to issue interim orders.

Omission of section 34.

Amendment of section 35.

23. In section 35 of the principal Act, for the words "complainant or defendant", the words "person or an enterprise" shall be substituted.

Substitution of new section for section 36.

24. For section 36 of the principal Act, the following section shall be substituted, namely:—

Power of Commission to regulate its own procedure.

"36. (1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office.

1 of 1872.

(3) The Commission may call upon such experts, from the field of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person—

(a) to produce before the Director General or the Secretary or an officer authorised by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.”

Omission of section 37.

25. Section 37 of the principal Act shall be omitted.

Substitution of new section for section 39.

26. For section 39 of the principal Act, the following section shall be substituted, namely:—

Execution of orders of Commission imposing monetary penalty.

"39. (1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.

(2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

43 of 1961.

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the

43 of 1961

Second Schedule to that Act and any rules made thereunder shall in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Income-tax officer and Commissioner of Income-tax.

43 of 1961.

Explanation 1.—Any reference to sub-section (2) or sub-section (6) of section 220 of the Income-tax Act, 1961, in the said provisions of that Act or the rules made thereunder shall be construed as references to sections 43 to 45 of this Act.

43 of 1961.

Explanation 2.—The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act.”

27. Section 40 of the principal Act shall be omitted.

Omission of section 40.

28. For section 42 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 42.

“42. (1) Without prejudice to the provisions of this Act, if any person violates any direction issued or contravenes, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, then he shall, without prejudice to any proceedings under section 39, be liable for imposition of an additional penalty not exceeding rupees ten lakhs or imprisonment for a term up to one year or both as the Civil Court having jurisdiction in the matter may deem fit.

Contravention of orders of Commission.

(2) The Commission may cause an investigation to be made into compliance of its orders and, based on the results of the investigation or otherwise, file a complaint before the Civil Court having jurisdiction in the matter, which shall pass such order under this section as it may deem fit:

Provided that the Civil Court shall not take cognizance of any offence punishable under this section, save on a complaint filed by the Commission or any of its officers authorised by it.”.

29. In section 43 of the principal Act, in clause (a), for the words, brackets and figure “under sub-section (5)”, the words, brackets and figures “under sub-sections (2) and (4)” shall be substituted.

Amendment of section 43.

30. In section 46 of the principal Act,—

Amendment of section 46.

(a) for the first proviso, the following proviso shall be substituted, namely:—

“Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making such disclosure:”;

(b) in the second proviso, for the word “first”, the word “has” shall be substituted.

31. In section 49 of the principal Act, in sub-section (1), for the words and brackets “In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference”, the following shall be substituted, namely:—

Amendment of section 49.

“The Central Government may, in formulating a policy on competition (including review of laws related to competition) and a State Government may, in formulating a policy on competition, make a reference”.

Amendment of
section 51.

32. In section 51 of the principal Act, in sub-section (1),—

(i) clause (b) shall be omitted;

(ii) in clause (d), for the words, brackets and letters “clauses (a) to (c)”, the words, brackets and letters “clauses (a) and (c)” shall be substituted.

Amendment of
section 52.

33. In section 52 of the principal Act, in sub-section (2), in the *Explanation*, for the words “Supreme Court”, the words “Appellate Tribunal or the Supreme Court” shall be substituted.

Insertion of new
Chapter VIII A.

34. After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER VIIIA

COMPETITION APPELLATE TRIBUNAL

Establishment
of Appellate
Tribunal.

53A. (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal—

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 44, section 45 or section 46 of the Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission and pass orders for the recovery of compensation under section 53N.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

Appeal to
Appellate
Tribunal.

53B. (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Composition
of Appellate
Tribunal.

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

53D. (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

Qualifications for appointment of Chairperson and members of Appellate Tribunal.

(2) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

53E. (1) The Chairperson and members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by the Selection Committee composition of which has been specified in section 9.

Selection Committee.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

53F. The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Term of office of Chairperson and members of Appellate Tribunal.

Provided that no Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

53G. (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall be such as may be prescribed.

Terms and conditions of service of Chairperson and members of Appellate Tribunal.

(2) The salaries, allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

53H. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

53-I. The Chairperson or a member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation of Chairperson and members of Appellate Tribunal.

Provided that the Chairperson or a member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

53J. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation, the senior-most member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

Member of Appellate Tribunal to act as its Chairperson in certain cases.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member or, as the case may be, such one of the member of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Removal and suspension of Chairperson and members of Appellate Tribunal.

53K. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has become physically or mentally incapable of acting as such Chairperson or other member of the Appellate Tribunal; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member of the Appellate Tribunal; or

(f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Restriction on employment of Chairperson and other members of Appellate Tribunal in certain cases.

53L. The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or a local authority or in any statutory authority or in any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

Staff of Appellate Tribunal.

53M. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Awarding compensation.

53N. (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by the enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable

from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that in a case no decision or order has been made or direction issued on the contravention alleged on the application by the Commission, the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

53-O. (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

Procedure and powers of Appellate Tribunal.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*;
- (i) any other matter which may be prescribed.

(3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

53P. (1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

Execution of orders of Appellate Tribunal.

- (a) in the case of an order against a company, the registered office of the company is situate; or
- (b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Contravention of orders of Appellate Tribunal.

53Q. Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the civil court directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

Vacancy in Appellate Tribunal not to invalidate acts or proceedings.

53R. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Right to legal representation.

53S. (1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.— The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the *Explanation* to section 35.

Appeal to Supreme Court.

53T. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to punish for contempt.

53U. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to modifications that,—

70 of 1971.

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the references to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.’.

Amendment of section 57.

35. In section 57 of the principal Act, for the words “the Commission”, the words “the Commission or the Appellate Tribunal” shall be substituted.

Substitution of new section for section 58.

36. For section 58 of the principal Act, the following section shall be substituted, namely:—

“58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”.

Members, Chairperson, Director General, Secretary, officers and other employees, etc. to be public servants.

45 of 1860.

37. In section 59 of the principal Act, for the words "the Registrar or officers or other employees of the Commission", the words "the Secretary or officers or other employees of the Commission or the Chairperson, members, officers and other employees of the Appellate Tribunal" shall be substituted.

Amendment of section 59.

38. In section 61 of the principal Act, for the word "Commission", the words "Commission or the Appellate Tribunal" shall be substituted.

Amendment of section 61.

39. In section 63 of the principal Act, in sub-section (2),—

Amendment of section 63.

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9;"

(ii) clause (c) shall be omitted;

(iii) after clause (d), the following clause shall be inserted, namely:—

"(da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16;"

(iv) in clauses (e) and (f), for the words "such other advisers, consultants or officers" the words "such officers or other employees" shall be substituted;

(v) in clause (g), for the word "Registrar", the word "Secretary" shall be substituted;

(vi) clauses (h) and (i) shall be omitted;

(vii) after clause (m), the following clauses shall be inserted, namely:—

"(ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;

(mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E;

(mc) the salaries and allowances and other terms and conditions of the Chairperson and other members of the Appellate Tribunal under sub-section (1) of section 53G;

(md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M;

(me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N;

(mf) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 while trying a suit;"

(viii) for clause (n), the following clause shall be substituted, namely:—

"(n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of section 66.

5 of 1908.

40. In section 64 of the principal Act, in sub-section (2), for clauses (d) and (e), the following clauses shall be substituted, namely:—

Amendment of section 64.

(d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17;

(e) the fee which may be determined under clause (g) of sub-section (1) of section 19;

(f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;

(g) the manner in which penalty shall be recovered under sub-section (1) of section 39;

(h) any other matter in respect of which provision is to be, or may be, made by regulations.".

Amendment of
section 66.

41. In section 66 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereafter referred to as the repealed Act) shall stand dissolved:

54 of 1969.

Provided that, notwithstanding anything contained in this sub-section, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act, may continue to exercise jurisdiction and powers under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings (including complaints received by it or references or applications made to it) filed before the commencement of this Act as if the Monopolies and Restrictive Trade Practices Act, 1969 had not been repealed and all the provisions of the said Act so repealed shall *mutatis mutandis* apply to such cases or proceedings or complaints or references or applications and to all other matters.

54 of 1969.

Explanation.—For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 on or after the commencement of this Act.

54 of 1969.

(1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall, however, not affect,—

54 of 1969.

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid,

and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.”.

(b) in sub-section (2),—

(i) for the second proviso, the following proviso shall be substituted, namely:—

"Provided further that the Director-General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be;"

(ii) in the third proviso, for the words "the Central Government", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be," shall be substituted;

(iii) in the fourth proviso,—

(A) for the words "the Central Government shall, out of the monies standing", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing" shall be substituted;

(B) for the portion beginning with the words "the Central Government and such monies" and ending with the words "as may be prescribed" the following shall be substituted, namely:—

"the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed";

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.";

(d) in sub-section (4), for the words "on or before the commencement of this Act shall, on such commencement", the words, brackets and figure "shall, before the expiry of two years referred to in the proviso to sub-section (1)," shall be substituted;

(e) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.".

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that have resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian market be geared to face competition from within the country and outside. The Competition Act, 2002 provided for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India (CCI) was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court delivered its judgment on the 20th January, 2005. While disposing of the Writ Petition, the Hon'ble Supreme Court observed that "if an expert body is to be created as submitted on behalf of the Union of India consistent with what is said to be the international practice, it might be appropriate for the respondents to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and the other adjudicatory. This followed up by an appellate body as contemplated by the proposed amendment, can go a long way, in meeting the challenge sought to be raised in this Writ Petition based on the doctrine of separation of powers recognised by the Constitution. Any way, it is for those who are concerned with the process of amendment to consider that aspect. It cannot be gainsaid that the Commission as now contemplated, has a number of adjudicatory functions as well.". The Hon'ble Supreme Court left open all questions regarding the validity of the Competition Act, 2002 including rule 3 of the Competition Commission of India (Selection of Chairperson and Other Members of the Commission) Rules, 2003.

3. The Competition (Amendment) Bill, 2006, *inter alia*, seeks to make the following amendments to the Competition Act, 2002 so as to address various legal issues and to make the CCI fully operational on a sustainable basis, namely:—

(a) to provide that CCI would be an expert body which will function as a market regulator for preventing anti-competitive practices in the country and it would also have advisory and advocacy functions in its role as a regulator;

(b) to omit the provisions relating to adjudication of disputes between two or more parties by the CCI and to provide for investigation through the Director General in case there exist a *prima facie* case relating to anti competitive agreements or abuse of dominant position under the Competition Act, 2002 and conferring power upon the CCI to pass orders on completion of an inquiry and impose monetary penalties and in doing so the CCI would work as a collegium and its decisions would be based on simple majority;

(c) to provide for establishment of the Competition Appellate Tribunal (CAT), which shall be a three-member quasi-judicial body headed by a person who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court and selection of the Chairperson and other members of CAT to be made by a Selection Committee headed by the Chief Justice of the Supreme Court of India or his nominee, and having Secretaries of Ministries of Company Affairs and Law as its members;

(d) to provide for hearing and disposing of appeals by the CAT against any direction issued or decision made or order passed by the CCI;

(e) to provide for adjudication by CAT of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Competition Act, 2002;

(f) to provide for implementation of the orders of the CAT as a decree of a civil court;

(g) to provide for filing of appeal against the orders of the CAT to the Supreme Court;

(h) to confer powers to sectoral regulators to make *suo motu* reference to CCI on competition issues, in addition to the present provision of making reference, when such request is made by any party in a dispute before it.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of CCI, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the CCI is duly constituted. Cases still remaining pending after this two year period, would be transferred to CAT or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 24th February, 2006.

PREM CHAND GUPTA.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 5/31/2003-IGC, dated the 24th February, 2006 from
Shri Prem Chand Gupta, Minister of Company Affairs to the Secretary-General,
Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition (Amendment) Bill, 2006 recommends introduction of the Bill in Lok Sabha under article 117(1) of the Constitution and also recommends to Lok Sabha the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

Clause 2.— This clause seeks to amend section 2 of the Competition Act, 2002 relating to definitions. It is proposed to define the expression “Appellate Tribunal” used in the Bill.

Clause 3.— This clause seeks to amend section 4 of the Competition Act, 2002 relating to abuse of dominant position.

Under the existing provisions contained in clause (c) of sub-section (2) of said section, there shall be an abuse of dominant position if an enterprise indulges in practice or practices resulting in denial of market access.

It is proposed to amend the said clause (c) and to insert the words “in any manner”. The proposed amendment is clarificatory in nature.

Clause 4.— This clause seeks to substitute section 8 of the Competition Act, 2002 relating to composition of Competition Commission of India.

The new clause provides that the Commission shall consist of a Chairperson and not less than two and not more than six other Members instead of ten Members under the existing provisions of section 8 to be appointed by the Central Government. It also proposes to remove from eligibility requirement that the person who has been or is qualified to be a Judge of a High Court, omit the special knowledge of, and professional experience of administration or in any other matter from the qualifications for appointment as Chairperson or any other Member.

Clause 5.— This clause seeks to substitute section 9 of the Competition Act, 2002 relating to selection of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions, the Chairperson and other Members shall be selected in the manner as may be specified by the rules made by the Central Government. The Competition Commission of India (selection of Chairperson and other Members of the Commission) Rules, 2003 made under this section provide for selection of the Chairperson and other Members by a Selection Committee consisting of (a) a person, who has been a retired judge of the Supreme Court or a High Court or a retired Chairperson of a Tribunal established or constituted under an Act of Parliament or a distinguished jurist or a Senior Advocate for five years or more—as Member, (b) a person who has special knowledge of, and professional experience of twenty-five years or more in international trade, economics, business, commerce or industry—as Member, (c) a person who has special knowledge of, and professional experience of twenty-five years or more in accountancy, management, finance, public affairs or administration—as Member, to be nominated by the Central Government.

The new clause provides that the Chairperson and other Members of the Competition Commission of India, shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of (a) the Chief Justice of India or his nominee, (b) the Secretary in the Ministry of Company Affairs—as Member and (c) the Secretary in the Ministry of Law and Justice—as Member.

It further provides that the term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Clause 6.— This clause seeks to amend section 10 of the Competition Act, 2002 relating to term of office of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions no Chairperson of the Competition Commission of India can hold office as such after he has attained the age of sixty-seven years and no other Member can hold office as such after he has attained the age of sixty-five years.

It is proposed to amend the said section 10 to provide that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.

Clause 7.— This clause seeks to amend section 12 of the Competition Act, 2002 relating to restriction on employment of Chairperson and other Members of the Competition Commission of India in certain cases.

Under the existing provisions contained in the said section, the Chairperson and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act. However, this provision does not apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

It is proposed to amend said section 12 to increase the said restriction on employment of Chairperson and other Members of the Competition Commission of India from one year to two years.

Clause 8.— This clause seeks to substitute section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration.

Under the existing provisions contained in the said section, the financial and administrative powers of Member Administration are vested in the Member Administration designated by the Central Government.

It is proposed to substitute the said section 13 by a new section to provide that the Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. However, the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit to any other Member or officer of the Commission.

Clause 9.— This clause seeks to amend section 16 of the Competition Act, 2002 relating to appointment of Director General, etc.

Under the existing provisions contained in the said section, the Central Government can appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of the Competition Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under the Competition Act, 2002.

It is proposed to amend the said section so as to, *inter alia*, omit the “advisers” and “consultants” from the scope of section 16 and therefore the Central Government would not appoint “advisers” and “consultants” in the Competition Commission of India. The power to engage the “advisers”, and “consultants” is proposed to be conferred upon the Competition Commission of India.

Clause 10.— This clause seeks to substitute section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees of the Competition Commission of India by a new section.

Under the existing provisions contained in the said section, the Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

It is proposed to substitute said section to confer power upon the Commission to appoint a Secretary instead of Registrar and such experts and professionals of integrity and outstanding ability who have special knowledge of, and experience in economics, law, business

or such other disciplines related to competition, as it deems necessary to assist the Commission in addition to officers and other employees in the discharge of its functions under the said Act.

Clause 11.— This clause seeks to amend section 19 of the Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise.

Under the existing provisions contained in clause (a) of sub-section (1) of the said section, the Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on receipt of a complaint.

It is proposed to amend said section so as to substitute “receipt of a complaint”, by the words “receipt of any information, in such manner” to enable the Commission to inquire into any alleged contravention on receipt of any information instead of receipt of a complaint.

Clause 12.— This clause seeks to amend section 21 of the Competition Act, 2002 relating to reference by statutory authority.

Under the existing provisions contained in sub-section (1) of said section where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of the Competition Act, 2002, then such statutory authority may make a reference in respect of such issue to the Commission.

It is proposed to amend said sub-section (1) so as to provide that any statutory authority may make a reference on its own under that sub-section. It further provides that on receipt of opinion of the Competition Commission of India, the statutory authority shall pass orders recording reasons thereon.

Clause 13.— This clause seeks to substitute section 22 of the Competition Act, 2002 relating to Benches of the Competition Commission of India.

Under the existing provisions contained in the said section, the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

It is proposed to substitute the said section for the meetings of the Competition Commission of India. It, *inter alia*, provides that the Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations. It further provides that all questions which come up before any meeting of the Commission shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote. It also provides that the quorum for such meeting shall be three members.

Clause 14.— This clause seeks to omit sections 23, 24 and 25 of the Competition Act, 2002 relating to distribution of business of the Competition Commission of India amongst Benches, procedure for deciding a case where Members of a Bench differ in opinion and jurisdiction of Bench.

Clause 15.— This clause seeks to substitute section 26 of the Competition Act, 2002 relating to procedure for inquiry on complaints under section 19.

It is proposed to provide that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter. It further provides that on receipt of reference under the above provision, if the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the person or consumer or their association or trade association, as the case may be. The Director General on receipt of direction under

the above provision shall submit a report on his findings within such period as may be specified by the Commission. The Commission may forward a copy of the report to the parties concerned. It also provides that if the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned as the case may be, on such report of the Director General. It provides that if the Commission agrees to the recommendations of the Director General, he shall close the matter and pass such order as it deems fit and communicate its order to the authorities mentioned. It further provides that after consideration of the objections or suggestions referred to above, if any, the Commission is of the opinion that further investigations are called for, it may direct for further investigation. It further provides that if the report of the Director General recommends that there is contravention of any of the provisions of the Competition Act and the Commission is of the opinion that further inquiry is called for, it shall enquire into such contravention in accordance with the provisions of the Competition Act.

Clause 16.— This clause seeks to amend section 27 of the Competition Act, 2002 relating to Orders by the Competition Commission of India after inquiry into agreements or abuse of dominant position.

The provisions contained in the said section, *inter alia*, confer power upon the Competition Commission of India to pass orders awarding compensation to parties in accordance with the provisions contained in section 34.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 34 of the Bill.

It is, therefore, proposed to omit clause (c) of the aforesaid section which confer power upon the Competition Commission of India to pass orders awarding compensation. The proposed amendment is of consequential in nature.

Clause 17.— This clause seeks to amend section 28 of the Competition Act, 2002 relating to division of enterprise enjoying dominant position.

Under the existing provisions contained in the said section, the Central Government can, on recommendation of the Commission order division of enterprise enjoying dominant position.

It is proposed to amend section 28 of the Act so as to confer said power upon the Competition Commission of India to order division of an enterprise, instead of the Central Government to order the division on recommendation of the Commission.

Clause 18.— This clause seeks to amend section 29 of the Competition Act, 2002 relating to procedure for investigation of combinations.

It is, *inter alia*, proposed to insert a new sub-section (1A) to provide that the Commission may, after receipt of the response of the parties to the combination under sub-section (1), call for a report from the Director General and such report shall be submitted by the Director General within sixty days. However, the Commission may, on sufficient reason being submitted by the Director General for non-submission of report within sixty days, grant up to sixty days more to the Director General for submission of the report.

Clause 19.— This clause seeks to substitute section 30 of the Competition Act, 2002 relating to inquiry into disclosures under sub-section (2) of section 6.

Under the existing provisions contained in the said section, where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire, (a) whether the disclosure made in the notice is correct (b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

It is proposed to substitute section 30 so as to provide that where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion and proceed in accordance with the provisions of section 29.

Clause 20.— This clause seeks to amend section 32 of the Competition Act, 2002 relating to acts taking place outside India but having an effect on competition in India. The proposed amendment is clarificatory in nature.

Clause 21.— This clause seeks to substitute section 33 of the Competition Act, 2002 relating to power to grant interim relief.

Sub-section (2) of the said section confers specific power upon the Competition Commission of India to grant, by order, a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities in cases specified in the said sub-section. Sub-section (3) of the existing aforesaid section provides that the provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court.

It is proposed to omit said sub-sections (2) and (3).

Clause 22.— This clause seeks to omit section 34 of the Competition Act, 2002 relating to power to award compensation.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 34 of the Bill. It is, therefore, proposed to omit aforesaid section 34 conferring power upon the Competition Commission of India to award compensation.

Clause 23.— This clause seeks to amend section 35 of the Competition Act, 2002 relating to appearance before of the Competition Commission of India.

Under the existing provisions contained in the said section, a complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

It is proposed to amend the said section so as to substitute the words “person or an enterprises”, for the words “a complainant or defendant” for appearance before the Commission.

Clause 24.— This clause seeks to substitute section 36 of the Competition Act, 2002 relating to power of Commission to regulate its own procedure.

The existing provisions confer powers upon the Competition Commission of India, *inter alia*, to dismiss an application in default or deciding it *ex parte* or exercise power in respect of any other matter which may be prescribed and provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It is proposed to omit said powers and provision.

Clause 25.— This clause seeks to omit section 37 of the Competition Act, 2002 relating to review of orders of the Competition Commission of India.

Clause 26.— This clause seeks to substitute section 39 of the Competition Act, 2002 relating to execution of orders of the Competition Commission of India which provides that every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal

civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be.

It is proposed to substitute said section, *inter alia*, to provide that if a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in the manner as may be specified by regulations. Sub-section (2) of proposed new section provides that in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Competition Act, 2002 in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under Income-tax Act, 1961 for recovery of the penalty as tax due under the said Act.

Clause 27.— This clause seeks to omit section 40 of the Competition Act, 2002 relating to appeal.

Under the existing provisions contained in the said section, any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

It is proposed to insert, by clause 34 of the Bill, new sections 53B and 53T to provide filing of appeal from any direction, decision or order referred to in clause (a) of new section 53A to the Appellate Tribunal and filing of an appeal to the Supreme Court from any decision or order of the Appellate Tribunal. Omission of section 40 is consequential in nature.

Clause 28.— This clause seeks to substitute section 42 of the Competition Act, 2002 relating to contravention of orders of the Competition Commission of India.

Under the existing provisions contained in the said section if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakh.

It is proposed to substitute the said section so as to provide that a civil court having jurisdiction shall order for civil prison and additional penalty on a complaint made by the Commission.

Clause 29.— This clause seeks to amend section 43 of the Competition Act, 2002 relating to penalty for failure to comply with directions of the Competition Commission of India and Director General of the Commission. The proposed amendment is consequential in nature.

Clause 30.— This clause seeks to amend section 46 of the Competition Act, 2002 relating to power to impose lesser penalty.

Under the existing provisions of the said section the Competition Commission of India has been conferred power to impose lesser penalty in the circumstances mentioned in that section. The first proviso to said section provides that the Commission shall not impose lesser penalty in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure.

It is proposed to substitute said first proviso to provide that the Commission shall not impose lesser penalty in cases where the report of investigation directed to be made under section 26 has been received before making of such disclosure.

Clause 31.— This clause seeks to amend section 49 of the Competition Act, 2002 relating to Competition advocacy.

Under the existing provisions contained in sub-section (1) of the said section the Central Government may, in formulating a policy on competition (including review of laws related to competition), make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.

It is proposed to amend said sub-section (1) to enable a State Government, in formulating a policy on competition, make a reference to the Commission for its opinion under said section and provisions of this section would apply to the reference made by the State Government.

Clause 32.— This clause seeks to amend section 51 of the Competition Act, 2002 relating to constitution of fund.

The provisions contained in clause (b) of sub-section (1) of the existing said section, *inter alia*, provide that the monies received as costs from parties to proceedings before the Commission shall be credited to the “Competition Fund” constituted by that section.

It is proposed to omit said clause (b) so as to provide that the monies received as costs from parties to proceedings before the Commission shall not be credited to the Competition Fund.

Clause 33.— This clause seeks to amend section 52 of the Competition Act, 2002 relating to accounts and audit.

The *Explanation* to sub-section (2) of said section clarifies that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

It is, therefore, proposed to amend said *Explanation* so as to provide that the orders of the Commission, being matters appealable to the Competition Appellate Tribunal shall also not be subject to audit under this section.

Clause 34.— This clause seeks to insert new Chapter VIIIA of the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal.

The new Chapter VIIIA contains provisions for (a) establishment of Appellate Tribunal, (b) appeal to Appellate Tribunal, (c) composition of Appellate Tribunal, (d) qualifications for appointment of Chairperson and members of Appellate Tribunal, (e) Selection Committee, (f) term of office of Chairperson and members of Appellate Tribunal, (g) terms and conditions of service of Chairperson and members, (h) vacancies, (i) resignation of Chairperson and members, (j) member to act as Chairperson in certain cases, (k) removal and suspension of Chairperson and members of Appellate Tribunal, (l) restriction on employment of Chairperson and other members in certain cases, (m) Staff of Appellate Tribunal, (n) Procedure for awarding compensation, (o) procedure and powers of Appellate Tribunal, (p) execution of orders of Appellate Tribunal, (q) contravention of orders of Appellate Tribunal, (r) vacancy or Appellate Tribunal not to invalidate acts or proceedings, (s) right to legal representation, (t) appeal to Supreme Court and (u) power to punish for contempt.

Clause 35.— This clause seeks to amend section 57 of the Competition Act, 2002 relating to restriction on disclosure of information.

Under the existing provisions contained in the said section, no information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in

writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of the Competition Act or any other law for the time being in force.

Clause 34.— This clause seeks to amend section 58 of the Competition Act, 2002 relating to Members, Director General, Registrar, officers and other employees, etc., of the Competition Commission of India, to be public servants.

Under the existing provisions contained in the said section, the Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of the Competition Act, 2002, to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 10.— This clause seeks to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 34 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary or officers or other employees of the Commission, Chairperson, members, officers and other employees of the Appellate Tribunal within the scope of section 58 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 37.— This clause seeks to amend section 59 of the Competition Act, 2002 relating to protection of action taken in good faith.

Under the existing provisions contained in the said section, no suit, prosecution or other legal proceedings can lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Clause 10.— This clause seeks to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 34 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary or officers or other employees of the Commission, Chairperson, members, officers and other employees of the Appellate Tribunal within the scope of the aforesaid section. The proposed amendment is consequential in nature.

Clause 38.— This clause seeks to amend section 61 of the Competition Act, 2002 relating to exclusion of jurisdiction of civil courts.

Under the existing provisions contained in the said section, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 34.— This clause seeks to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to exclude the jurisdiction of civil courts in respect of any matter in which the Commission or Appellate Tribunal is empowered to determine. The proposed amendment is consequential in nature.

Clause 39.— This clause seeks to amend section 63 of the Competition Act, 2002 relating to power to make rules.

It is proposed to amend said section so as to confer powers upon the Central Government to make rules in respect of certain matters specified in that section and to make certain other amendments which are consequential in nature.

Clause 40.— This clause seeks to amend section 64 of the Competition Act, 2002 relating to power to make regulations by the Competition Commission of India.

It is proposed to amend said section 64 so as to confer powers upon the Competition Commission of India to make regulations in respect of certain matters specified in the said section.

Clause 41.— This clause seeks to amend section 66 of the Competition Act, 2002 relating to repeal and saving.

Under the existing provisions, the Monopolies and Restrictive Trade Practices Act, 1969 is proposed to be repealed and upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act shall stand dissolved. Sub-sections (2) to (10) of the aforesaid section deals with the matters arising out of such repeal.

It is proposed to amend said section 66 so as to provide that the Monopolies and Restrictive Trade Practices Commission may continue to exercise jurisdiction and power under that Act for a period of two years from the date of bringing into force of section 66 of the Competition Act, 2002, only in respect of all cases of proceeding filed before such commencement. It further provides that the transfer of pending cases after the two years period to the Appellate Tribunal or the National Commission under Consumer Protection Act, 1986 depending on the nature of cases. It also provides that the staff of the Commission who has been employed on regular basis by the Monopolies and Restrictive Trade Practices Commission shall, on its dissolution, become employees for the Competition Commission or the Appellate Tribunal in the manner as specified by the Central Government.

FINANCIAL MEMORANDUM

Clause 34 of the Bill seeks to establish a Competition Appellate Tribunal with a Chairperson and up to two members, along with associated staff, whose expenses would be paid from the Consolidated Fund of India. However clause 4 of the Bill seeks to reduce the strength of the Competition Commission from ten additional Members to six additional Members. Clause 13 of the Bill further provides for Commission to function as a collegium and not through Benches, leading to absence of need for provision of offices to these Benches, and the need for branches of Director General's office at these Benches.

2. The expenditure to be incurred on creation of the Competition Appellate Tribunal would be rupees 109.61 lakh per annum. However, there would be a decrease in expenditure up to an extent of rupees 222.39 lakh in a year due to reduction of strength of Competition Commission of India from ten additional members to six additional members, and by removal of the concept of Benches functioning at different locations, and their associated Director General subordinate offices. Thus, there would be an overall saving of rupees 112.78 lakh per annum.

3. Thus, there would not be any additional financial outgo due to the changes proposed in the amendment Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 39 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the term of selection committee and manner of selection of panel of names under sub-section (2) of section 9; (b) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors or such officers or other employees may be appointed under sub-section (1A) of section 16; (c) the salary, allowances and other terms and conditions of service of the officers and other employees in addition to the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (3) of section 16; (d) the qualifications for appointment of officers and other employees in addition to the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (4) of section 16; (e) the salaries and allowances and other terms and conditions of service of the Secretary in addition to the officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17; (f) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal; (g) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E, (h) the salaries and allowances and other terms and conditions of the Chairperson and other members of the Appellate Tribunal under sub-section (1) of section 53G; (i) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M; (j) the fee which shall be accompanied with every application made under sub-section (2) of section 53N; (k) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure while trying a suit; and (l) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall be dealt with by that Competition Commission of India or the Appellate Tribunal under the fourth proviso to sub-section (2) of section 66;

2. Clause 40 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such regulations may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17; (b) the rules procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22; and (c) the manner in which penalty shall be recovered under sub-section (1) of section 39.

3. The rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

P.D.T. ACHARY,
Secretary-General.